

ATTACHMENT B

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
WALKER RIVER PAIUTE TRIBE,)
)
Plaintiff-Intervenor,)
)
vs.)
)
WALKER RIVER IRRIGATION DISTRICT,)
a corporation, et al.,)
)
Defendants.)
)
MINERAL COUNTY,)
)
Proposed-Plaintiff-Intervenor)
)
vs.)
)
WALKER RIVER IRRIGATION DISTRICT)
a corporation, et al.)
)
Proposed Defendants.)
)

IN EQUITY NO. C-125-ECR
Subproceeding: C-125-C
3:73-CV-00128-ECR-RAM

**PROPOSED FORM OF JOINT
MOTION FOR SUBSTITUTION
OF PARTIES FOLLOWING
TRANSFER OF INTEREST AND
REQUEST FOR HEARING**

This motion is filed in Subproceeding C-125-C, which involves claims for water in the Walker River by Mineral County. This motion is filed pursuant to Fed. R. Civ. P. 25(c) and this Court's *Order Concerning Service Issues Pertaining to Defendants Who Have Been Served* (#) and is filed jointly by _____, who is a current Defendant in this action based on the ownership of one or more water rights claims under the Walker River Decree ("Current Defendant") and has conveyed or otherwise transferred one or more of these water rights claims to _____ ("Proposed Defendant").

By this motion, the Current Defendant and Proposed Defendant ask the Court to substitute the Proposed Defendant into this action in place of the Current Defendant regarding the specific water right(s) identified herein. The parties to this motion request a hearing on this motion if any objections are filed to this motion. If there are no objections, the parties to this motion consent to the Court entering an Order of Substitution without a hearing.

I. Identification of Current Defendant:

The undersigned Current Defendant in the above action hereby notifies the Court and Mineral County that the undersigned (or the entity on whose behalf I am acting) has sold or otherwise conveyed ownership of all or a portion of a water right or rights under the Walker River Decree to the Proposed Defendant and provides the following information:

- A. The name and address of the Current Defendant who sold or otherwise conveyed ownership:

Name(s):
Street or P.O. Box:
Town or City:
State:
Zip Code:
Telephone Number:
E-mail Address:

- B. Attorney Representation:

- ☐ Check here if the Current Defendant is not represented by counsel in this subproceeding.
- ☐ Check here if the Current Defendant is represented by counsel in this subproceeding.

If the Current Defendant is represented by counsel in this subproceeding, that attorney is identified below, along with his or her mailing address, telephone number, facsimile number, and e-mail address:

Attorney:
Address:

Telephone Number:
Fax Number:
E-mail Address:

II. Identification of Proposed Defendant:

The undersigned Proposed Defendant in the above action hereby notifies the Court and Mineral County that the undersigned (or the entity on whose behalf I am acting) has acquired ownership of all or a portion of a water right or rights under the Walker River Decree from the Current Defendant and provides the following information:

- A. The name and address of the Proposed Defendant who acquired the water right or rights at issue in this motion:

Name(s):
Street or P.O. Box:
Town or City:
State:
Zip Code:
Telephone Number:
E-mail Address:

- B. Attorney Representation:

- ☐ Check here if the Proposed Defendant is not represented by counsel in this subproceeding.
- ☐ Check here if the Proposed Defendant is represented by counsel in this subproceeding.

If the Proposed Defendant is represented by counsel in this proceeding, that attorney is identified below, along with his or her mailing address, telephone number, facsimile number, and e-mail address:

Attorney:
Address:

Telephone Number:
Fax Number:
E-mail Address:

III. Identification of the Water Right(s) Addressed in this Motion:

- A. This motion addresses the following water right(s) that the Current Defendant has transferred or otherwise conveyed to the Proposed Defendant:
- B. Attached to and included with this motion are true and correct copies of all documents by which the change in ownership addressed in this motion was accomplished (check all appropriate boxes):
 - ☐ Deed(s)
 - ☐ Court Order(s)
 - ☐ Other Document(s)

IV. Request for Substitution:

- A. By this filing, the Current Defendant requests that the Proposed Defendant be substituted into this action as the Counter-Defendant in regard to the water right(s) identified in Section III.A.
- B. By this filing, the Proposed Defendant agrees to be substituted into this action as the Counter-Defendant in regard to the water right(s) identified in Section III.A.
- C. The undersigned Current Defendant and Proposed Defendant acknowledge that any person or entity who files this type of motion for substitution in this matter is ultimately responsible for the accuracy of this filing. Consequently, the undersigned Current Defendant and Proposed Defendant acknowledge that any defendant who files such a motion, but, in fact, retains the water rights addressed in this motion, shall nevertheless be bound by the results of this litigation.
- D. Following the conveyance or transfer identified above, does the Current Defendant retain any water right or portion of a water right under the Walker River Decree, including any rights not identified in Section III?
 - ☐ No. Subsequent to the conveyance/transfer identified in this motion, I/we/entity do not own any other water rights under the Walker River Decree. As a result, I/we/entity submit that the Court may dismiss the Current Defendant from this subproceeding because I/we/entity no longer own any water rights that are subject to this subproceeding.

- Yes. Subsequent to the conveyance/transfer identified in this motion, I/we/entity own other water rights under the Walker River Decree. As a result, the Current Defendant remains a Counter-Defendant in this subproceeding based on the ownership of other water rights that are subject to this subproceeding.

V. Waiver of Service pursuant to Fed. R. Civ. P. 4:

This Section applies to any Proposed Defendant that is not already a Counter-Defendant in this case based on its ownership of other water rights. By its signature to this motion, the Proposed Defendant:

- A. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) have been made aware of the fact that the water right(s) described in Section III above are subject to this subproceeding, which is entitled *United States v. Walker River Irrigation District*, and which is docket number In Equity C-125, Subfile C-125-C, in the United States District Court for the District of Nevada, and that I am bound by all Orders in this subproceeding;
- B. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) need not be served separately or personally, pursuant to Fed. R. Civ. P. 4, with a Notice in Lieu of Summons, the instant motion or any other previous filing in this subproceeding;
- C. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) may file a NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE in the Court at the address indicated in Section VII, below; and
- D. Acknowledges that I/we/entity (or the entity on whose behalf I am acting) will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the Court, except for objections based on a defect in service pursuant to Fed. R. Civ. P. 25(c) regarding this motion.

VI. Certifications and Acknowledgements:

By this filing, the Current Defendant and Proposed Defendant acknowledge that:

- A. Federal Rule of Civil Procedure 25(c) governs the substitution of successors-in-interest that are the result of a transfer, other than those resulting from the death of a defendant, and provides in relevant part that “[i]f an interest is transferred, the action may be

continued by or against the original party unless the court, on motion, orders the transferee to be substituted in the action or joined with the original party....”;

- B. Rule 25(c) does not require that anything be done after an interest is transferred, which means that the action may be continued by or against the original party, and the judgment will be binding on his successor-in-interest even though the successor-in-interest is not named;
- C. Absent the filing of this or a similar motion, this action would continue in the name of the Current Defendant, but would nevertheless bind the Proposed Defendant and any future successors-in-interest to the results of the litigation;
- D. Other parties to the case, acting pursuant to the Federal Rules of Civil Procedure, may wish to file their position(s) regarding the merits of this motion, and may support, oppose or take no position on the merits of this motion;
- E. Following the filing of this motion, the action will continue in the name of the Current Defendant for the water right(s) identified herein until such time as the Court approves the substitution requested herein. While substitution does not automatically dismiss a Current Defendant from this subproceeding, the Court may dismiss the Current Defendant if that Defendant no longer has any water rights subject to this proceeding.

VII. Filing and Service of this Motion:

The Current Defendant and Proposed Defendant have filed this motion in the above action with the:

Chief Deputy Clerk
United States District Court for the
District of Nevada
400 South Virginia Street, Suite 301
Reno, Nevada 89501

and served a copy of this motion on:

Simeon Herskovits
P.O. Box 1075
El Prado, New Mexico 87529

PLEASE NOTE: Attorneys are reminded that they are required to comply with the electronic filing procedures of the U.S. District Court for District of Nevada.

“Attorneys who are admitted to the bar of this court, admitted to participate in a case pro hac vice, or who are authorized to represent the United States and its agencies, shall register as Filing Users of the System. Registration shall be in the form prescribed by the Clerk of the Court and by these Electronic Filing Procedures.” U.S. Dist. Ct., D. Nev., Electronic Filing Procedures (rev. Aug. 24, 2006) at I.C.

Signature of Current Defendant:

(Signature)

(Printed or typed Name)

Entity, if any, on whose behalf you are appearing: _____

The forgoing instrument was signed before me this ____ day of _____, 20__ by

_____.

State of _____

County of _____

Signature of Notary

My Commission Expires:

Signature of Proposed Defendant:

(Signature)

(Printed or typed Name)

Entity, if any, on whose behalf you are appearing: _____

The forgoing instrument was signed before me this ____ day of _____, 20__ by

_____.

State of _____

County of _____

Signature of Notary

My Commission Expires: